

ESTTA Tracking number: **ESTTA493692**

Filing date: **09/11/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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| Proceeding | 91200832 |
| Party | Plaintiff Briggs & Stratton Corporation |
| Correspondence Address | ROBERT N PHILLIPS REED SMITH LLP 101 SECOND STREET SAN FRANCISCO, CA 94105 UNITED STATES ipdocket-chi@reedsmith.com, nborders@reedsmith.com, robphillips@reedsmith.com, ddaugherty@whdlaw.com |
| Submission | Opposition/Response to Motion |
| Filer's Name | Robert N. Phillips |
| Filer's e-mail | robphillips@reedsmith.com |
| Signature | /Robert N. Phillips/ |
| Date | 09/11/2012 |
| Attachments | Exh A to Herring Declaration.pdf (18 pages)(621779 bytes) |

EXHIBIT A

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| | Applicant. | | | |

**OPPOSER’S SUPPLEMENTAL RESPONSES TO APPLICANT’S FIRST SET OF
INTERROGATORIES**

Opposer Briggs & Stratton Corporation (“Opposer”) hereby supplementally responds to Applicant Honda Motor Co., Ltd’s (“Applicant”) First Set of Interrogatories as follows:

General Objections

1. Opposer objects to Applicant’s definition of “Applicant’s Mark” as vague and ambiguous to the extent it includes the phrase “any other mark used by Applicant that is a colorable imitation of the mark.”

2. Opposer objects to the Applicant’s definition of “Opposer’s Products” as argumentative and inaccurate to the extent it infers that Opposer’s 550 Series of engines, or any other engines manufactured or sold by Opposer, have a design that is “substantially similar” to “Applicant’s Mark.”

3. Opposer objects to the extent the Interrogatories seek documents or information protected by the attorney-client privilege, that is protected by the work product doctrine, or which constitutes or discloses the mental impressions, conclusions, opinions, or legal theories of any attorney or the representative of Opposer concerning this opposition (hereinafter "Privileged Information"). Such information shall not be provided in response hereto, and inadvertent disclosure of them shall not be deemed a waiver of any privilege or of protection of attorney work product.

4. Opposer objects to the Interrogatories to the extent they seek to impose obligations beyond those provided in the Federal Rules of Civil Procedure.

5. Consistent with Fed. R. Civ. P. 33(d), Opposer objects to providing responses to Interrogatories where the information can be derived from documents which are being produced in response to related document requests propounded by Applicant.

6. Opposer generally objects to the interrogatories to the extent they seek information that is wholly unrelated to the issues in this opposition and not reasonably calculated to lead to the discovery of admissible evidence.

7. Opposer generally objects to the interrogatories to the extent they seek information for an unreasonable period of time.

8. Opposer generally objects to the interrogatories to the extent they are vague and ambiguous, and thus not susceptible to a reasoned interpretation or response.

9. Opposer generally objects to the interrogatories to the extent they are overly broad, unnecessarily burdensome, or oppressive.

10. Opposer objects to all introductory instructions and definitions to Applicant's First Set of Interrogatories to the extent the instructions or definitions purport to enlarge, expand, or alter in any way the plain meaning and scope of any specific Interrogatory on the ground that such enlargement, expansion, or alteration renders said Interrogatory vague, ambiguous, unintelligible, unduly broad, and/or uncertain.

11. Opposer objects to each Interrogatory to the extent it purports to require Opposer to obtain information outside of its possession, custody, and control from other persons or entities.

12. Opposer objects to each Interrogatory to the extent it calls for information that is publicly available and/or seeks information already within Applicant's knowledge, possession, custody or control.

13. Opposer objects to each Interrogatory to the extent it seeks confidential, proprietary information.

14. Opposer objects to each Interrogatory to the extent that it improperly contains multiple subparts. Accordingly, Opposer reserves the right to treat each Interrogatory as multiple interrogatories for purposes of the applicable interrogatory limits.

15. The answers provided below are based upon information currently available to Opposer through due inquiry and Opposer reserves the right to supplement these responses during the course of discovery as additional information is ascertained.

16. Opposer reserves the right to modify, amend or supplement its General Objections, any additional specific objections, and the answers provided below.

17. Opposer's answers are made without waiver of, and with preservation of, all objections as to competency, relevancy, materiality, privilege and admissibility of the answers and the subject matter thereof as evidence for any purposes in any further proceeding in this action and any other action or proceeding.

18. Each and every one of these General Objections is incorporated by this reference into each and every one of the Responses set forth below.

INTERROGATORIES

INTERROGATORY NO. 1:

Please state the date on which you first sold or offered each and every different engine in Opposer's 550 Series of engines, specifying the product for each date.:

RESPONSE: Subject to and without waiving the General Objections, Opposer responds that it first offered 550 Series engines for sale in the United States in or about May 2009.

INTERROGATORY NO. 2:

Please identify each person involved in the origination, design, development, addition or selection of each of Opposer's Products and for each person, identify the nature and extent of such involvement and identify documents concerning such involvement.

RESPONSE: Opposer objects to Interrogatory No. 2 as being vague, ambiguous, burdensome, overbroad, irrelevant to the subject matter of this action, and not likely to lead to the discovery of admissible evidence. Opposer further objects to the interrogatory to the extent it seeks Privileged Information. Opposer further objects to the interrogatory to the extent it requests documents concerning "such involvement" as vague, ambiguous, overbroad, burdensome and oppressive, irrelevant to the subject matter of this action, and not likely to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections and General Objections, Opposer states that at least Peter Hotz, Jeff Whitmore, and Ron Weber have knowledge about the design and development of the 550 Series engine.

INTERROGATORY NO. 3:

Please describe the circumstances under which you first learned of Applicant's use of Applicant's Mark.

RESPONSE: Opposer objects to Interrogatory No. 3 as being vague, ambiguous, burdensome, overbroad, irrelevant to the subject matter of this action, and not likely to lead to the discovery of admissible evidence. Opposer further objects to the interrogatory to the extent it seeks

Privileged Information. Subject to and without waiving the foregoing objections and General Objections, Opposer states that it likely first learned of Applicant's GX engine at or about the time the engine was introduced in the market.

INTERROGATORY NO. 4:

Please specify each and every different version of Opposer's Products ever sold or offered by you, and for each, please indicate if the product is currently being sold or offered.

RESPONSE: Opposer objects to Interrogatory No. 4 as being vague, ambiguous, overbroad, burdensome and oppressive, irrelevant to the subject matter of this action, and not likely to lead to the discovery of admissible evidence. Opposer further objects to the interrogatory to the extent it seeks Privileged Information. Subject to and without waiving the foregoing objections and General Objections, Opposer states that it has offered for sale at least the following engines with horizontal shaft designs:

- (a) 550 Series Engine Model M8
- (b) 750 Series Engine Model M10
- (c) 800 & 900 Series Engine Model M12
- (d) 1150 Series Engine Model 15
- (e) 1350 and 1450 Series Engine Model M13
- (f) 1650 Series Engine Model 21
- (g) 2100 Series Engine Model 25
- (h) Vanguard Engine Model 5, 2.4 HP
- (i) Vanguard Engine Model 8, 4 HP
- (j) Vanguard Engine Model 11, 6 HP
- (k) Vanguard Engine Model 13, 5.5-6.5 HP
- (l) Vanguard Engine Model 13, 7.5 HP
- (m) Vanguard Engine Model 18, 9 HP
- (n) Vanguard Engine Model 19, 8-10 HP

- (o) Vanguard Engine Model 24, 13 HP

SUPPLEMENTAL RESPONSE: Opposer incorporates by reference each of its General Objections and the objections previously made to this interrogatory. Subject to and without waiver of the foregoing objections, Opposer states that it has offered for sale the following engines with horizontal shaft designs:

- (a) 550 Series Engine Model M8
- (b) 750 Series Engine Model M10
- (c) 800 & 900 Series Engine Model M12
- (d) 850 Series Engine Model M12 (discontinued)
- (e) 875 Series Engine Model M12 (discontinued)
- (f) 1100 Series Engine Model 15 (discontinued)
- (g) 1150 Series Engine Model 15
- (h) 1350 and 1450 Series Engine Model M13
- (i) 1550 Series Engine Model 21 (discontinued)
- (j) 1650 Series Engine Model 21
- (k) 2100 Series Engine Model 25
- (l) Vanguard Engine Model 5, 2.4 HP
- (m) Vanguard Engine Model 8, 4 HP
- (n) Vanguard Engine Model 11, 6 HP
- (o) Vanguard Engine Model 13, 5.5-6.5 HP
- (p) Vanguard Engine Model 13, 7.5 HP
- (q) Vanguard Engine Model 18, 9 HP
- (r) Vanguard Engine Model 19, 8-10 HP
- (s) Vanguard Engine Model 24, 13 HP
- (t) Model 2464 generator engine
- (u) Model 2354 11 HP (discontinued)

INTERROGATORY NO. 5:

For each product identified in response to Interrogatory Number 5, please state:

- (a) the prices at which the product is being sold, and the prices at which it was sold over the past five years for which data is available;
- (b) whether the product is sold or offered to wholesale or retail customers, and whether such customers use the product for business or personal purposes;
- (c) the price of an average sale; and
- (d) if applicable, the dollar amount of sales for that product in each of the last five years for which data is available.

RESPONSE: Opposer objects to Interrogatory No. 5 as being vague, ambiguous, compound, overbroad, burdensome and oppressive, irrelevant to the subject matter of this action, and not likely to lead to the discovery of admissible evidence. Opposer further objects to the interrogatory to the extent it seeks Privileged Information. Opposer further objects to the interrogatory to the extent it seeks confidential, proprietary information. Subject to and without waiving the foregoing objections and General Objections, and upon entry of an appropriate protective order regarding handling of confidential information, Opposer will provide information regarding the total annual U.S. sales of the products identified in response to Interrogatory No. 4.

SUPPLEMENTAL RESPONSE: Opposer incorporates by reference each of its General Objections and the objections previously made to this interrogatory. Subject to and without waiver of the foregoing objections, Opposer will respond to this interrogatory with a production of documents pursuant to Federal Rule of Civil Procedure 33(d), addressing subparts (c) and (d) above.

INTERROGATORY NO. 6:

Describe in detail the channels of distribution which Opposer uses for the Opposer's Products identified in response to Interrogatory No. 5, including representative outlets, such as

the top five (by dollar volume of sales) retailers, wholesalers or distributors, through which Opposer sells such goods.

RESPONSE: Opposer objects to Interrogatory No. 6 as being vague and ambiguous, overbroad, burdensome and oppressive, irrelevant to the subject matter of this action, and not likely to lead to the discovery of admissible evidence.

INTERROGATORY NO. 7:

If Opposer is aware of the use by any person, other than Applicant, of any engine that incorporates, substantially or entirely, the design of Applicant's Mark, or any colorable imitation thereof, please provide the details of such use(s).

RESPONSE: Opposer objects to Interrogatory No. 7 as being vague and ambiguous, overbroad, burdensome and oppressive. Opposer further objects to the interrogatory to the extent it seeks Privileged Information. Subject to and without waiving the foregoing objections and General Objections, and in addition to the products identified in response to Interrogatory No. 4, Opposer states it is aware of at least the following third party horizontal shaft engine designs which are similar to the design illustrated and described in Applicant's subject trademark application:

- (a) Subaru Robin SP and EX Series Engines
- (b) Kohler Command Pro and Courage Series Engines
- (c) Tecumseh Engines
- (d) Loncin G, Viper, and Dewalt Series Engines
- (e) Predator (212 cc) OHV Horizontal Shaft Gas Engine
- (f) Lifan Pro Series Engines
- (g) RATO Engines
- (h) Zongshen Engines
- (i) Champion OHV Horizontal Replacement Engines Models 61301, 61151, 66504, and 64001

- (j) LCT Engines
- (k) Kawasaki Engines
- (l) Jiangdong Engines

In addition, Opposer is aware of equipment incorporating the above referenced engines, or other similarly designed horizontal shaft engines. Opposer will produce documents identifying such equipment.

INTERROGATORY NO. 8:

Please identify all market research that you have had conducted relating to Applicant's Mark and/or Opposer's Products.

RESPONSE: Opposer objects to Interrogatory No. 8 as being vague and ambiguous, overbroad, burdensome and oppressive, irrelevant to the subject matter of this action, and not likely to lead to the discovery of admissible evidence. Opposer further objects to this interrogatory as overbroad and premature to the extent it seeks information that will be the subject of expert testimony. Opposer further objects to the interrogatory to the extent it seeks Privileged Information.

SUPPLEMENTAL RESPONSE: Opposer incorporates by reference each of its General Objections and the objections previously made to this interrogatory. Subject to and without waiver of the foregoing objections, Opposer will produce documents regarding all nonprivileged market research its has conducted regarding Applicant's applied-for mark and/or Applicant's GX engine pursuant to Federal Rule of Civil Procedure 33(d).

INTERROGATORY NO. 9:

Identify all of Opposer's past and present trademark registrations or applications (federal, state and foreign) for any engine design.

RESPONSE: Opposer objects to Interrogatory No. 9 as being overbroad, burdensome and oppressive, irrelevant to the subject matter of this action, and not likely to lead to the discovery

of admissible evidence. Opposer further objects to the Interrogatory to the extent it calls for information that is publicly available and would be directly accessible by Applicant.

SUPPLEMENTAL RESPONSE: Opposer incorporates by reference each of its General Objections and the objections previously made to this interrogatory. Subject to and without waiver of the foregoing objections, Opposer responds that no such registrations or applications exist.

INTERROGATORY NO. 10:

Please:

- (a) identify the principal competitors in the business in which Opposer provides Opposer's Products;
- (b) describe the market position, including customer identity and product type, to which Opposer targets or intends to target its business in which Opposer provides Opposer's Products; and
- (c) describe any plans Opposer currently has for expansion or contraction of its business in which Opposer provides Opposer's Products.

RESPONSE: Opposer objects to Interrogatory No. 10 as being vague, ambiguous, compound, overbroad, burdensome and oppressive, irrelevant to the subject matter of this action, and not likely to lead to the discovery of admissible evidence. Opposer further objects to the interrogatory to the extent it seeks Privileged Information.

SUPPLEMENTAL RESPONSE: Opposer incorporates by reference each of its General Objections and the objections previously made to this interrogatory. Subject to and without waiver of the foregoing objections, Opposer's principal competitors in the engine business are: Kohler Co., Applicant, Lifan, Mitsubishi Heavy Industries, Subaru, Kawasaki, Yamaha, Zongshen, Generac, Rato, Loncin, and LCT.

INTERROGATORY NO. 11:

If anyone acting on Opposer's behalf has ever contacted anyone who was a customer or prospective customer of Applicant or Opposer relating to this Opposition or Applicant's Mark or describe the circumstances surrounding that contact.

RESPONSE: Opposer objects to Interrogatory No. 11 as vague and ambiguous, overbroad, burdensome and oppressive, irrelevant to the subject matter of this action, and not likely to lead to the discovery of admissible evidence. Opposer further objects to the interrogatory to the extent it seeks Privileged Information. Subject to and without waiving the foregoing objections and General Objections, Opposer states that there is no nonprivileged responsive information to disclose with respect to contacts regarding this Opposition proceeding.

INTERROGATORY NO. 12:

Please state the basis for any contention by Opposer that "the Engine Design as shown and described in the opposed application is not inherently distinctive and has not acquired distinctiveness in accordance with §2 of the Federal Trademark Act, 15 U.S.C. §1052(f)."

RESPONSE: Opposer objects to Interrogatory No. 12 as overbroad and premature to the extent it seeks information that will be the subject of expert testimony. Opposer further objects to the interrogatory to the extent it seeks Privileged Information. Subject to and without waiving the foregoing objections and General Objections, Opposer states that the Engine Design in the opposed application is not inherently distinctive and has not acquired distinctiveness because it is a common design for horizontal shaft engines, there are a number of manufacturers of horizontal shaft engines selling engines having a similar design, and the Engine Design as claimed in the opposed application is not associated solely with Applicant. Moreover, Opposer is unaware of any look-for advertising by Applicant for the claimed Engine Design; rather, Applicant relies on the HONDA trademark to identify its products. Opposer states its investigation continues. Discovery in this case is ongoing, and Opposer reserves the right to supplement this response.

INTERROGATORY NO. 13:

Please state the basis for any contention by Opposer that “the Engine Design as shown and described in the opposed application is functional.”

RESPONSE: Opposer objects to Interrogatory No. 13 as overbroad and premature to the extent it seeks information that will be the subject of expert opinion. Opposer further objects to the interrogatory to the extent it seeks Privileged Information. Subject to and without waiving the foregoing objections and General Objections, Opposer states that the Engine Design in the opposed application is functional because features of the Engine Design as claimed are essential to the use, purpose, efficiency, and safety of the engine. Further, features of the Engine Design as claimed in the opposed application are selected and configured in the engine for ease of manufacturing, cost efficiency, and practicality. For at least these reasons, a number of other engine manufacturers have adopted a similar design for horizontal shaft engines. Limited options are available for the design of a compact, efficient, and safe horizontal shaft engine. Opposer states its investigation continues. Discovery in this case is ongoing and Opposer reserves the right to supplement this response.

INTERROGATORY NO. 14:

Please state the basis for any contention by Opposer that “the Engine Design as shown and described in the opposed application has not been used as a trademark.”

RESPONSE: Opposer objects to Interrogatory No. 14 as overbroad and premature to the extent it seeks information that will be the subject of expert opinion. Opposer further objects to the interrogatory to the extent it seeks Privileged Information. Subject to and without waiving the foregoing objections and General Objections, Opposer states that the Engine Design in the opposed application has not been used as a trademark because Opposer is unaware of any look-for advertising by Applicant for the claimed Engine Design; rather, Applicant relies on the HONDA trademark to identify its products. Also, the Engine Design as claimed in the opposed application is not associated solely with Applicant. Opposer further states its investigation

continues. Discovery in this case is ongoing and Opposer reserves the right to supplement this response.

INTERROGATORY NO. 15:

Please describe in detail the basis for any contention that “there are substantial differences in appearance between Applicant’s Mark and Opposer’s Products.”

RESPONSE: Opposer objects to Interrogatory No. 15 as irrelevant to the subject matter of this action, and not likely to lead to the discovery of admissible evidence. Opposer further objects to the interrogatory to the extent it seeks Privileged Information.

INTERROGATORY NO. 16:

Please state the names and addresses of all natural persons who supplied information on which the answers to the foregoing Interrogatories are based and for each such person list the specific Interrogatory numbers for which he or she supplied such information. If the information is not within the personal knowledge of such person, identify the source of the information so furnished.

RESPONSE: Subject to and without waiving the General Objections, Opposer responds that the following persons supplied information in response to Applicant’s First Set of Interrogatories to Opposer:

- (a) Kenneth Lemke
Intellectual Property Counsel
Briggs & Stratton Corporation
12301 W. Wirth St.
Wauwatosa, WI 53222-2110
- (b) Ron Weber
Briggs & Stratton Corporation
12301 W. Wirth St
Wauwatosa, WI 53222-2110

- (c) Peter Hotz
Briggs & Stratton Corporation
12301 W. Wirth St
Wauwatosa, WI 53222-2110

INTERROGATORY NO. 17:

Please state the names and addresses of all natural persons who participated in any way in locating or providing documents or things in response to Applicant's First Set of Requests for Production of Documents and Things, specifying for each such person the specific Requests on which the person participated in preparing a response.

RESPONSE: Subject to and without waiving the General Objections, Opposer responds that the following persons participated in providing documents or things in response to Applicant's First Set of Requests for Production of Documents:

- (a) Kenneth Lemke
Intellectual Property Counsel
Briggs & Stratton Corporation
12301 W. Wirth St
Wauwatosa, WI 53222-2110
- (b) Ron Weber
Briggs & Stratton Corporation
12301 W. Wirth St.
Wauwatosa, WI 53222-2110
- (c) Peter Hotz
Briggs & Stratton Corporation
12301 W. Wirth St.
Wauwatosa, WI 53222-2110

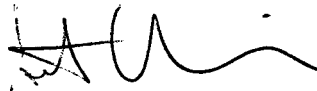
INTERROGATORY NO. 18:

Identify each expert that you expect to call as a witness in this proceeding and state the subject matter on which each expert is expected to testify, the substance of the expert's opinion, and the grounds of the opinion.

RESPONSE: Opposer objects to Interrogatory No. 18 as premature to the extent it seeks information that will be the subject of expert opinion. Opposer further objects to the interrogatory to the extent it seeks Privileged Information.

May 11, 2012

By:



Robert N. Phillips
Reed Smith LLP

Seth B. Herring
Reed Smith LLP

Nina Habib Borders
Reed Smith LLP


Attorneys for Opposer
BRIGGS & STRATTON
CORPORATION

VERIFICATION

I, Peter Hotz, am Vice President Engine Product Development of Briggs & Stratton Corporation, and am authorized to make this Verification on its behalf. I have read the foregoing OPPOSER'S SUPPLEMENTAL RESPONSE TO APPLICANT'S FIRST SET OF INTERROGATORIES, and know its contents. I am informed and believe that the matters stated therein are true.

I declare under penalty of perjury under the law of the United States of America that the foregoing is true and correct.

Executed at Wauwasota, Wisconsin on this 11 day of May, 2011.

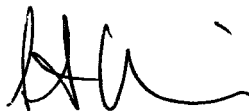


PETER HOTZ

CERTIFICATE OF SERVICE

In accordance with Rule 2.105(a) of the Trademark Rules of Practice, as amended, it is hereby certified that a true copy of the foregoing OPPOSER BRIGGS & STRATTON CORPORATION'S SUPPLEMENTAL RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES was served on the following counsel of record for Applicant, by electronic mail and depositing same in the U.S. mail, first class postage prepaid, this 11th day of May, 2012:

Michael J. Bevilacqua, Esq.
Wilmer Cutler Pickering Hale and Dorr LLP
60 State Street
Boston, MA 02109-1800
Phone: (617) 526-6448
Fax: (617) 526-5000

A handwritten signature in black ink, appearing to read 'SH', is written above a horizontal line.

Seth Herring